

**EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET**

**PROJECT TITLE:**

An Ordinance Relating to the  
Inchoate Crimes of Criminal  
Attempt, Criminal Solicitation,  
and Criminal Conspiracy,  
Amending and Adding a New  
Section to Ordinance No.  
1145-85 as amended (Chapter  
10.10 EMC)

\_\_\_\_\_ Briefing  
\_\_\_\_\_ Proposed Action  
\_\_\_\_\_ Consent  
\_\_\_\_\_ Action  
\_\_\_\_\_ First Reading  
\_\_\_\_\_ Second Reading  
\_\_\_\_\_ Third Reading  
\_\_\_\_\_ Public Hearing

COUNCIL BILL #  
Originating Department  
Contact Person  
Phone Number  
FOR AGENDA OF

CB11604-16  
Legal  
Hil Kaman  
425-257-8762  
April 20, 2016

Initialed by:  
Department Head  
CAA  
Council President

ds  
AM

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u> Ordinance (final, redlined)	<u>Department(s) Approval</u> Legal
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Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

**DETAILED SUMMARY STATEMENT:**

State law has changed since our ordinance relating to the inchoate crimes of criminal attempt, criminal solicitation, and criminal conspiracy was last updated.

This proposed ordinance would adopt the Revised Code of Washington sections relating to criminal attempt, criminal solicitation, and criminal conspiracy to make this section of the Everett Municipal Code consistent with State law.

Case law has also changed since this ordinance was last updated, requiring the addition of a new section regarding Class C felonies in the Revised Code of Washington. This update is important because criminal attempt of a class C felony is a gross misdemeanor.

**RECOMMENDATION** (Exact action requested of Council):

Adopt an Ordinance Relating to the Inchoate Crimes of Criminal Attempt, Criminal Solicitation, and Criminal Conspiracy, Amending and Adding a New Section to Ordinance No. 1145-85 as amended (Chapter 10.10 EMC).

ORDINANCE No. \_\_\_\_\_

**AN ORDINANCE Relating to the Inchoate Crimes of Criminal Attempt, Criminal Solicitation, and Criminal Conspiracy, Amending and Adding a New Section to Ordinance No. 1145-85 as amended (Chapter 10.10 EMC).**

**Whereas**, state law and case law regarding the inchoate crimes of criminal attempt, criminal solicitation, and criminal conspiracy have changed since this ordinance was last updated; and

**Whereas**, the City of Everett has the power to provide for the punishment of all practices dangerous to public health or safety, and to make necessary for the preservation of public health, peace and good order and to provide for the punishment of all persons charged with violating any city ordinances; and

**Whereas**, the Everett City Council deems it appropriate for the City of Everett criminal laws to match corresponding State law;

**NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:**

**Section 1.** Ordinance No. 1145-85, Section 28, as amended by Ordinance No. 2369-99, Section 1 (EMC 10.10.010), ~~which reads~~ **is hereby amended** as follows:

**Criminal attempt.**

- A. A person is guilty of an attempt to commit crime if, with intent to commit a specific crime, he does any act which is a substantial step toward the commission of that crime.
- B. If the conduct in which a person engages otherwise constitutes an attempt to commit a crime, it is no defense to a prosecution of such attempt that the crime charged to have been attempted was, under the attendant circumstances, factually or legally impossible of commission.
- C. An attempt to commit a crime is a:
  - 1. Gross misdemeanor when the crime attempted is a class C felony;
  - 2. Misdemeanor when the crime attempted is a gross misdemeanor or misdemeanor.

**Be and the same is hereby amended to read as follows:**

**Criminal attempt.**

~~A.—A person is guilty of an attempt to commit crime if, with intent to commit a specific crime, he does any act which is a substantial step toward the commission of that crime.~~



~~B.— If the conduct in which a person engages otherwise constitutes an attempt to commit a crime, it is no defense to a prosecution of such attempt that the crime charged to have been attempted was, under the attendant circumstances, factually or legally impossible of commission.~~

~~C.— An attempt to commit a crime is a:~~

~~1.— Gross misdemeanor when the crime attempted is a class C felony;~~

~~2.— Misdemeanor when the crime attempted is a gross misdemeanor or misdemeanor.~~

The following Revised Code of Washington (RCW) section is adopted by reference in all respects as though such section was set forth herein in full, as currently enacted or as hereafter amended or recodified: Chapter 9A.28.020 RCW, entitled “Criminal attempt.”

**Section 2.** Ordinance No. 1145-85, Section 29 (EMC 10.10.020), ~~which reads~~ **is hereby amended** as follows:

**Criminal solicitation.**

A. A person is guilty of criminal solicitation when, with intent to promote or facilitate the commission of an offense under the ordinances of the city, he offers to give or gives money or thing of value to another to engage in specific conduct which would constitute such offense or which would establish complicity of such other person in its commission or attempted commission had such offense been attempted or committed.

B. Criminal solicitation is a misdemeanor.

**Be and the same is hereby amended to read as follows:**

~~A.— A person is guilty of criminal solicitation when, with intent to promote or facilitate the commission of an offense under the ordinances of the city, he offers to give or gives money or thing of value to another to engage in specific conduct which would constitute such offense or which would establish complicity of such other person in its commission or attempted commission had such offense been attempted or committed.~~

~~B.— Criminal solicitation is a misdemeanor.~~

The following Revised Code of Washington section is adopted by reference in all respects as though such section was set forth herein in full, as currently enacted or as hereafter amended or recodified: Chapter 9A.28.030 RCW, entitled “Criminal solicitation.”

**Section 3.** Ordinance No. 1145-85, Section 30 (EMC 10.10.030), ~~is which reads~~ **hereby amended** as follows:

**Criminal conspiracy.**

A. A person is guilty of criminal conspiracy when, with intent that conduct constituting an offense under the ordinances of the city be performed, he agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of such agreement.

B. It shall not be a defense to criminal conspiracy that the person or persons with whom the accused is alleged to have conspired:

1. Has not been prosecuted or convicted; or
2. Has not been convicted of a different offense; or
3. Is not amenable to justice; or
4. Has been acquitted; or
5. Lacked the capacity to commit an offense.

C. Criminal conspiracy is a misdemeanor.

**Be and the same is hereby amended to read as follows:**

**Criminal conspiracy.**

~~A.—A person is guilty of criminal conspiracy when, with intent that conduct constituting an offense under the ordinances of the city be performed, he agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of such agreement.~~

~~B.—It shall not be a defense to criminal conspiracy that the person or persons with whom the accused is alleged to have conspired:~~

- ~~1.—Has not been prosecuted or convicted; or~~
- ~~2.—Has not been convicted of a different offense; or~~
- ~~3.—Is not amenable to justice; or~~
- ~~4.—Has been acquitted; or~~
- ~~5.—Lacked the capacity to commit an offense.~~

~~C.—Criminal conspiracy is a misdemeanor.~~



The following Revised Code of Washington (RCW) section is adopted by reference in all respects as though such section was set forth herein in full, as currently enacted or as hereafter amended or recodified: Chapter 9A.28.040 RCW, entitled "Criminal conspiracy."

**Section 4.** Ordinance No. 1145-85, as amended by Ordinance No. 2369-99, Section 1, is hereby amended by the addition of the following section which will be codified as EMC 10.10.040:

**Adoption of RCW sections not specifically set forth.**

All class C felony crimes set forth in the Revised Code of Washington (RCW) are hereby adopted by reference for the purposes of charging a gross misdemeanor for a violation of any of the crimes set forth in Chapter 10.10 EMC.

**Section 5.** Severability

Should any section, subsection, paragraph, sentence, clause or phrase of this Ordinance or its application to any person or situation, be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any other person or situation. The City Council of the City of Everett hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

**Section 6.** General Duty

It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

**Section 7.** Savings

The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

**Section 8.** Corrections

The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, Ordinance numbering, section/subsection numbers and any references thereto.

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**Ray Stephanson, Mayor**

**ATTEST:**

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**City Clerk**

**Passed:**

**Valid:**

**Published:**

**Effective Date:**